

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANDRA TREVINO DE ARIZMENDI)

Claimant)

V.)

NATIONAL BEEF PACKING COMPANY)

Respondent)

AND)

AMERICAN ZURICH INSURANCE CO.)

Insurance Carrier)

Docket No. 1,065,038

ORDER

Claimant requests review of Administrative Law Judge Pamela J. Fuller's April 10, 2014 preliminary hearing Order. Conn Felix Sanchez of Kansas City, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City appeared for respondent and its insurance carrier (respondent).

The record on appeal is the same as that considered by the judge and consists of the April 9, 2014 preliminary hearing transcript, in addition to all pleadings contained in the administrative file.

ISSUES

At the time of her injury, claimant resided in Dodge City. Guillermo Garcia, M.D., the authorized treating physician, is located in Garden City. After her injury, claimant moved to Brownsville, Texas.

The judge, referencing K.S.A. 44-510h(a) and K.S.A. 44-515(a), denied claimant's request for medical mileage from her Brownsville residence to Dr. Garcia's office and limited payment of medical mileage from where claimant resided at the time of her injury.

Claimant argues the judge exceeded her authority in restricting the payment of medical mileage only from claimant's residence at the time of her injury, instead of her Brownsville residence. Claimant asserts the judge, in restricting payment of mileage from claimant's Kansas residence to the doctor's office, created a new arbitrary rule not found in the statute. Respondent maintains the Order should be affirmed.

PRINCIPLES OF LAW & ANALYSIS

The Board's review of preliminary hearing orders is limited to allegations that a judge exceeded his or her jurisdiction,¹ including review of jurisdictional issues listed in K.S.A. 2013 Supp. 44-534a(a)(2): (1) did the worker sustain accidental injury or injury by repetitive trauma; (2) did the injury arise out of and in the course of employment; (3) did the worker provide timely notice; and (4) do certain other defenses apply. "Certain defenses" refer to defenses which dispute the compensability of the injury.²

Questions concerning payment of medical mileage are not issues or preliminary findings that the Board may review. A preliminary decision regarding payment of medical mileage is within a judge's jurisdiction. The judge did not exceed her jurisdiction. The Board does not have jurisdiction to review the preliminary hearing Order.

CONCLUSION

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member concludes the Board lacks jurisdiction to entertain claimant's appeal. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.

WHEREFORE, the undersigned Board Member dismisses claimant's appeal of the April 10, 2014 preliminary hearing Order.³

IT IS SO ORDERED.

Dated this _____ day of May 2014.

HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

¹ K.S.A. 2013 Supp. 44-551(l)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

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Honorable Pamela J. Fuller